IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 4634 OF 2006.

Malati Sakharam Joshi & ors. ... Petitioners.
V/s.
Vinod Asanand Kaku & ors. ... Respondents.

Shri A.Y. Abhyankar with R.P. Phadke for the petitioner.

Shri N.V. Walawalkar with G.H. Keluskar for respondent Nos. 1(a) to 1(c).

CORAM : V.C.DAGA, J.

DATED : 11.9..2006.

P.C. :

. Heard learned Counsel for the parties.

Perused petition.

2. Petitioners have suffered concurrent findings of fact. The findings recorded against the petitioners can be supported on the basis of the evidence available on record. The view taken by the Courts below is a reasonable and possible view. No perversity in the impugned can be demonstrated by the petitioners. This Court not being a Court of appeal is not expected to reappreciate the evidence and dislodge the findings of fact recorded by the Courts below, which can very well be supported by evidence available on record.

3. In this context, it is necessary to take

note of the judgment of the Apex Court in the case of **Laxmikant Revchand Bhojwani & anr. vs. Pratapsingh Mohansingh Pardeshi (1995) 6 SCC 576,** in para 9, wherein following observations were made:

> . " Before parting with this judgment, we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

4. Bearing in mind the above observations of the Apex Court and considering concurrent finding of fact recorded by the Courts below, it is very difficult to reach to the conclusion that the impugned order is a perverse order. Cogent reasons are given by the lower appellate Court while confirming the findings of fact recorded by the trial Court on each and every issue raised in the appeal. The lower appellate Court appreciated oral evidence and recorded findings of fact and affirmed the findings of facts recorded by the trial Court. No case is made out either in the petition or during the course of hearing to demonstrate that any piece

of evidence was not taken into account by the Courts below or that any piece of evidence was misconstrued by the lower appellate Court.

5. In the above view of the matter, petition is without any substance. The same is liable to be dismissed.

6. In the result, petition is dismissed in limine with no order as to costs.

7. At this stage, learned Counsel for the petitioners seeks 8 weeks time to vacate the suit premises for approaching higher forum. Shri Walawalkar, learned Counsel for the respondents has no objection to grant time. He states that the statement made by him earlier, not to execute the decree, shall continue for a further period of 8 weeks from today, subject to respondents filing usual undertaking in this Court, duly signed by all occupants of the premises, to the effect that in the event the petitioners are not successful in the higher forum, they will vacate and hand over vacant and peaceful of the suit premises to the respondents, without any excuse or demure and that they shall not create any third party interest in respect of the suit premises during this period.

Undertaking to be filed within one week from today.

. Needless to mention after 8 weeks, it would be open for the decree holder to execute the decree in accordance with law.

(V.C.DAGA,J.)